

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL

Plaintiffs,

v.

ESTATE OF HERBERT S. McDUFFEE,
JR., DECEASED, et al.,

Defendants.

Case No.: CIV. 02-0018 GEB GGH

ORDER

SETTLEMENT CONFERENCE:
MAY 29, 2009

AND RELATED CROSS-CLAIMS,
COUNTERCLAIMS, THIRD-PARTY
CLAIMS

All non-fully dismissed parties and their counsel are directed to appear for a settlement conference as follows:

May 29, 2009 at 10:00 a.m.: Attorneys and their clients with full authority to make settlement decisions, insurance carrier representatives for all parties with any type of potential insurance coverage, with full authority to make settlement decisions, and all pro per parties.¹

¹In the event that an attorney has full settlement authority, the client need not be present. "Full settlement authority" means that the client will not be involved in the settlement negotiations except insofar as the client must accept or reject the settlement. Requests by an attorney that modifications to a settlement proposal be made, after contact with a client, indicate that the attorney does not have full settlement authority. If the client desires to be involved in the substance and dynamics of the conference, the client must be present.

“All parties” include those non-dismissed parties who elected to be “nonparticipating” in the settlement process up to this point. See Participation Memorandum of November 19, 2003.

This settlement conference is scheduled pursuant to the November 4, 2003 Settlement Process Order, and specifically Stages II and III referenced therein. While the approved draft Remedial Action Plan (“RAP”) awaits public comment, and then final approval by DTSC, the settlement conference can proceed based on the approved draft RAP.

The settlement conference will begin with the parties organized in accordance with the groups identified in the settlement process order as modified herein. The groups will facilitate the court in working with the parties. The court may consider a different settlement discussion structure during the course of the settlement conference if necessary.

Notwithstanding the above, all settlement conference participants shall initially meet for a joint session on May 29, 2009 at 10:00 a.m. at the commencement of the conference to be updated on the events involving DTSC response to settlement alternatives, offers all groups might wish to consider, and other informational issues pertinent to the groups as a whole.

For settlement purposes the groups are as follows:

1. Owners’ Group:
Kester
McDuffee
Mid-Valley Development
Shankar
Stone
White Rock & Kilgore LLC
2. Arrangers’ Group:
Aerojet
Atlantic Richfield
Chevron U.S.A. Inc.
City of Sacramento
City of Roseville
County of Sacramento
Ellsworth Harrold
Exxon Mobil
FB Hart
International Truck

John L. Sullivan
Petroleum Tank Line
PG&E
R.L. Niello
Shell Oil
SMUD
State Agencies (CHP, Caltrans, State Garage)
Suburban Motors
Teichert, Inc.
Texaco Inc.
Turner Motors
Union Oil Company of California
Union Pacific Railroad
United States Air Force
Valley Livestock

Previously and currently identified non-participating parties (as set forth below)
shall join the Other Arrangers group:

Keil Enterprises
Maita Oldsmobile

The major issues for settlement include whether to settle on a per capita basis (i.e., total remediation costs are divided by the number of parties), a basis where individual equitable factors are assessed, or a hybrid of the two. Also important to final resolution is a determination of generator status and details governing those parties (including DTSC) who will remain responsible for implementing the remedy in the approved RAP, for any further monitoring, and work to be performed in later years, assuming an improbable event which would necessitate any further work to be performed.

All parties shall serve settlement conference statements on Judge Hollows in his chambers and on the other parties in the litigation 10 days prior to the date of the settlement conference, only if their position has changed from the April 2009 statements. The statements shall be based upon as much informal contact within and without the individual groups as possible. If it is possible for a group to prepare and serve a consolidated settlement conference statement containing group agreements, it is advisable to do so. Except for statements on behalf

of a group, the statements shall be no greater in length than five pages. No more than ten pages of exhibits may be served along with the settlement conference statements.

DATED: May 13, 2009

/s/ Gregory G. Hollows

GREGORY G. HOLLOWES
UNITED STATES MAGISTRATE JUDGE

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